

BOROUGH OF KETTERING

Committee	Planning Committee	Item 5.1	Page
Report Originator	Mark Philpott	ENFO/2011/00102	
Wards Affected	Rothwell	Date 06.11.12	
Title	Authorisation for Planning Enforcement Action at 36 Cecil Street, Rothwell		

1. **PURPOSE OF REPORT**

To seek authorisation to issue an Enforcement Notice in respect of unauthorised development at 36 Cecil Street, Rothwell, shown in bold outline for identification purposes on the site plan attached to this report.

2. **BREACH OF PLANNING CONTROL**

Without planning permission, the construction of an extension at second floor (roof) level, on the rear elevation of the dwellinghouse.

3. **RECOMMENDATION**

That in respect of the breach of planning control described above, the Head of Development Services be authorised to issue an Enforcement Notice pursuant to section 172 of the Town and Country Planning Act 1990 (as amended) requiring the step(s) to be taken within the specified time period(s); and for the reason(s) which are set out below:

3.1 **Steps to be Taken**

1. Remove the Juliet balcony and external doors from the second floor extension. Block up the lower part of the opening, leaving a window opening of 1.15m wide by 1.35m high, directly below the existing door head.
Time for compliance: 4 months
2. Insert a window into the opening resulting from Step 1 above..
Time for compliance: 4 months
3. Clad the blocked up door opening resulting from Step 1 above with tile to exactly match the appearance of the remainder of the external rear elevation of the second floor extension.
Time for compliance: 4 months
4. Permanently tint the colour of the brick in the eastern elevation of the second storey extension to match, as closely as possible, the colour of the brick in the

side elevation of remainder of the dwellinghouse, in accordance with British Standards (reference: BS EN 12878:2005)
Time for compliance: 4 months

3.2 Reasons For Issuing the Notice

The extension in question was substantially completed less than four years ago. It is considered that the extension, by virtue of its full height doors and Juliet balcony, results in a significant and unacceptable loss of privacy and overlooking and overbearing on the adjacent property. As a result of its siting, design and the materials used in the construction of the extension, it represents an incongruous form of development which is out of character with the existing dwellinghouse and the surrounding area.

As such the unauthorised development conflicts with the aims and objectives of the following planning policies:

National Planning Policy Framework

Paragraph 17 states that development should 'always seek to secure a high quality design and a good standard of amenity for all existing and future occupants of land and buildings'.

North Northamptonshire Core Spatial Strategy

Policy 13: General Sustainable Development Principles

Policy 13 part (h) states that development should 'be of a high standard of design, architecture and landscaping, respect and enhance the character of its surroundings and be in accordance with the Environmental Character of the area'

Policy 13 (l) states that development 'should not result in an unacceptable impact on the amenities of neighbouring properties or the wider area, by reason of noise, vibration, smell, light or other pollution, loss of light or overlooking.

The Council considers that planning permission should not be given, because planning conditions could not overcome these objections to the development.

4. **INFORMATION**

Site Description

Officer's site inspection was carried out on 21.09.2012.

Prior to the completion of the unauthorised development seeking retrospective planning permission, the site consisted of a two storey dwellinghouse.

The dwellinghouse is a red brick, detached property featuring a pitched, brown/grey, concrete tiled roof, approximately 7.5m in ridge height, and white UPVC window and door frames. The dwellinghouse features a monopitched rooved, two storey protrusion to the rear, approximately 7.2m in ridge height, which then drops to single storey height. The dwelling also features a UPVC conservatory and garden to the rear.

The site is located to the south of the Cecil Street highway, next to a footpath running directly to the west of the site, which connects Cecil Street to The Avenue. The north of the site is located at the Cecil Street and Spencer Street highway junction. The Avenue is located to the south and runs perpendicular to Cecil Street, with the effect that the development appears to be situated at the end of The Avenue.

The surrounding properties in Cecil Street consist of a mixture of two storey detached and semi-detached properties. Whilst the adjacent neighbours feature similarly rendered elevations, they otherwise differ in scale and design. The properties within The Avenue also differ in scale and design; however, the majority feature red brick elevations.

Planning History

None relevant

Planning Policy:

National Planning Policy Framework (NPPF)

Core planning principles

Development Plan

North Northamptonshire Core Spatial Strategy (CSS)

Policy 13: General Sustainable Development Principles

5. APPRAISAL

Consideration of this report will only be required if the recommendation for refusal of planning permission has been followed for the case reference KET/2012/0548, reported at item 4.4 on this agenda.

The second storey rear extension is unauthorised development because it fails to comply with Class B of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 1995 (as amended). Class B.2.(a) requires that *'the materials used in any exterior work shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse'*. Class B.2.(b) requires that *'the edge of the enlargement closest to the eaves of the original roof shall, so far as practicable, be not less than 20 centimetres from the eaves of the original roof'*.

The extension is not permitted because the materials used to clad the rear elevation of the extension do not match the materials used in the exterior of the existing dwellinghouse and the colour of the brick used in the construction of the eastern elevation of the extension is a noticeably lighter shade of red, which contrasts with the original dwellinghouse. In addition, the extension has been constructed on the rear elevation of the original dwellinghouse, rather than being set back from the eaves.

As the development is not permitted the impacts of the development must be determined in accordance with the Development Plan, as required by Section 38(6) of the Planning and Compulsory Purchase Act 2004. The Juliet balcony and full height doors result in unacceptable levels of overbearing, overlooking and loss of privacy. This conflicts with paragraph 17 of the NPPF and CSS Policy 13 part (I). The design, siting and materials used result in a development which is incongruous to the character of the existing building

and the surrounding area which conflicts with paragraph 17 of the NPPF and CSS Policy 13 part (h).

Had the extension complied with the General Permitted Development Order, the local planning authority would have no control over the size of openings or the installation of a Juliet balcony, however, a permitted dormer would have to be set back up the roof and away from the main rear wall and this would impact (a) on the practicality of inserting full height doors/balconies, and (b) on the effect of the development on neighbour amenity. The use of white UPVC windows would have been permitted as they match the appearance of those used in the construction of the rest of the dwellinghouse. Whilst the materials used to clad the rear elevation of the extension do not match the materials used in the exterior of the existing dwellinghouse, they are a recessive colour which would be considered befitting of roof extensions.

Paragraph 207 of the NPPF advises how local planning authorities should determine whether or not it is expedient to take enforcement action in respect of a breach in planning control. In particular it advises that '*enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches in planning control*'. In this case weight should be given to what could be built as permitted development and any enforcement action should be proportionate to this fall back position. The harm caused by the development relates to discordant appearance and neighbour amenity. Rather than seek the removal of the development in its entirety, the appearance could be mitigated by alterations to the design and materials, while the removal of the full height doors and balcony would reduce the effect on the amenity of neighbours. The steps set out in the proposed enforcement notice seek to modify those aspects of the design which cause harm to local amenity while respecting the householders right to have some form of roof extension.. Complete removal of the unauthorised works would be disproportionate in this instance.

It is considered that the unauthorised development has an unacceptable adverse impact which conflicts with the Development Plan and therefore it is recommended that enforcement action is authorised.

Human Rights Implications

Service of an enforcement notice in this instance is not a breach of the property owner's human rights. Whilst it does affect their property rights they will have an opportunity to challenge the decision by way of an appeal against the enforcement notice and that provides adequate safeguards in accordance with the Human Rights Act 1998 incorporating the European Human Rights Convention.

Background Papers:

Title of Document:

Date:

Contact Officer: Mark Philpott

Previous Reports/Minutes:

Ref:

Date: